
Madame President,

Paragraph 43 and 44 of the Report of the ICC (A/73/334), mentioned the Prosecutor’s submission of a request for a ruling of the Pre-Trial Chamber whether the Court might exercise jurisdiction on the alleged deportation of so called “Rohingyas” from Myanmar to Bangladesh. Consequently, on September 6, 2018, the Pre-Trial Chamber 1 had ruled by a majority decision that the Court may exercise jurisdiction over Myanmar.

Madam President,

Myanmar resolutely rejects the decision which is the result of faulty procedure and of dubious legal merit. Here, I would like to reiterate my Government’s position that not being a party to the Rome Statute, Myanmar is under no obligation to respect the ruling of the Court. The decision was the result of manifest bad faith, procedural irregularities and general lack of transparency. Permission was given to organizations to file *amicus curiae* submissions without consideration of their identity or the beneficial scope of their proposed contributions. Several of the briefs
submitted did not address legal issues. Furthermore, allegations consisting of charged narratives of harrowing personal tragedies which have nothing to do with the legal arguments in question were permitted thereby putting emotional pressure on the Court. Submissions of observations by these groups had the intended effect of placing the Court in an emotional bind.

The Prosecutor has incorrectly applied Article 19 (3) in her request for a ruling from the Court on jurisdiction when the Court is not properly seized of the matter. In this respect, Judge Marc Perrin de Brichambaut has shared his view that Article 19 (3) and 119 (1) of the Rome Statute are inapplicable and that the principle of la compétence de la compétence cannot serve as an alternative basis for the Chamber to provide a ruling.

Myanmar also disagrees with the Prosecution’s assertion that population displacement across a national boundary is an essential objective element of the crime of deportation set out in Article 7 (1) (d).

Furthermore, there is no organizational policy of the kind required for proving crimes against humanity under the Rome Statute. Such a policy would be hard to reconcile with the repatriation agreement signed between Myanmar and Bangladesh in November 2017, whereby both countries agreed on a short time frame for the voluntary return of all those who had left Rakhine State as a result of hostilities in the region. Myanmar and Bangladesh also signed the Terms of Reference for the Joint Working Group (JWG) and Physical Arrangement for Repatriation of Displaced Myanmar residents from Bangladesh (“the Physical Arrangement”). All these bilateral agreements are aimed to facilitate repatriation of verified residents of Rakhine State who crossed over to Bangladesh following the
ARSA terrorist attacks in October 2016 and August 2017. There was no cap on the number to be repatriated and the process was to have commenced on 23 January 2018.

Moreover, the Myanmar Government also signed a Memorandum of Understanding with UNDP and UNHCR on 6 June 2018. The MOU seeks UN participation in coordinating and harmonizing humanitarian and development action in Rakhine State, and in assisting the Government of Myanmar in the voluntary, safe and dignified return of the displaced persons from Rakhine State who have been duly verified as residents of Myanmar according to the Physical Arrangement. In accordance with the MOU, the UN team has already completed the first phase of field assessment at 23 villages in northern Rakhine. They are now undertaking the second phase of field assessment in additional 26 villages.

Madam President,

The Government of Myanmar is aware of accusations regarding human rights violations in the aftermath of the August 2017 terrorist attacks. In line with the Government’s commitment to the rule of law, an Independent Commission of Enquiry has been established on 30 July 2018. The Commission consists of two prominent international personalities and two national members. The commission will investigate allegations of human rights violations and related issues following the terror attacks by the Arakan Rohingya Salvation Army (ARSA). The Government of
Myanmar is committed to take necessary actions based on its findings. We are willing and able to take on the accountability issues for any alleged human rights violation where there is sufficient evidence.

Madame President,

The Government of Myanmar is now undertaking in earnest, preparation of necessary conducive conditions for the safe, voluntary and dignified repatriation of the people who fled to Bangladesh. In accord with the bilateral agreements and arrangements with Bangladesh, Myanmar has been ready to receive the first batch of verified returnees since January this year.

During the high level week of the 73rd session of the UN General Assembly, an informal meeting was held among China, Myanmar and Bangladesh with the presence of Secretary-General Mr. Guterres. The meeting reached a three-point consensus on resolving the issue of displaced persons in a friendly and expeditious manner. As a result of the consensus, the third meeting of the Joint Working Group will be held on 29-30 October in Dhaka to work out detail arrangements for the first repatriation at an early date. I can assure you, Madam President, the first group of verified displaced persons will be able to return to Rakhine State very soon.
Madame President,

The over-extended application of jurisdiction challenges the fundamental principle of legal certainty and is contrary to accepted principles of public international law. It has created a dangerous precedent and erodes the moral authority of the Court.

Nowhere in the ICC Charter does it say that the Court has jurisdiction over states which have not accepted that jurisdiction. Furthermore, the 1969 UN Vienna Convention on International Treaties states that no treaty can be imposed on a country that has not ratified it.

What the Prosecutor is attempting to do is to override the principles of national sovereignty and non-interference in the internal affairs of other states, in contrary to the principle enshrined in the UN Charter and recalled in the ICC Charter’s Preamble.

I would also like to state that we strongly deplore and reject attempts made by some UN member states for referral of Myanmar to the Court.

We will never recognise discriminatory, selective, biased, politically motivated and illegitimate ruling of the ICC jurisdiction over Myanmar.

Finally, my delegation will dissociate ourselves with the draft resolution to be adopted this afternoon.

Thank you.